

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of Petition :
 of :
U.G.P. PROPERTIES, INC. :
for refund of franchise tax under :
Article 9-A of the tax law for :
the fiscal years ended 3/31/71 :
and 3/31/72. :

The taxpayer having filed a petition for refund of franchise tax under Article 9-A of the tax law for the FYE 3/31/71 and 3/31/72, and a hearing having been held at the office of the State Tax Commission, 2 World Trade Center, New York City, at which hearing M. Drabkin, Esq., vice-president and general counsel, and L. H. Spence, Esq. of counsel, appeared and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) U.G.P. Properties, Inc., (hereafter UGP), was incorporated in New York on December 5, 1967 and is a wholly owned subsidiary of Union General Properties, Ltd., (hereafter Parent), a United Kingdom real estate corporation with its office in London, England. Parent is not subject to New York City, New York State or United States taxes.

(2) UGP was organized by parent to enter into an agreement with 51st Street Realty Corp., a subsidiary of the New York Central Company, under which UGP would demolish Grand Central Terminal and would construct an office building on the site. Since Grand Central Terminal has been designated a "landmark," permission is required before demolition. New York City denied permission and legal proceedings are pending.

(3) The agreement, in (2) above is conditioned on approval of demolition, after which, it becomes a lease for a term of 50 years, with an option to renew for an additional 25 years. The agreement was negotiated in 1967 by Mr. M. Saady, managing director of Parent and president of UGP. Mr. Saady comes to New York, a few times a year in connection with affairs of UGP.

(4) UGP filed New York State franchise tax returns for the fiscal years ended March 31, 1971 and March 31, 1972 and paid franchise tax computed by it as follows:

	<u>3/31/71</u>	<u>3/31/72</u>
Average total assets	\$1,862,311.00	\$2,068,286.00
Less: average current liabilities	464,197.00	546,516.00
Average business assets	1,398,114.00	1,521,770.00
Tax at 1.34 mills	1,873.00	
Tax at 1.6 mills		2,435.00

Average total assets include certificates of deposit of \$1,000,000 issued by New York banks, held as a rent security deposit by 51st Street Realty Corporation, as required by the agreement, plus other project costs.

(5) UGP filed claims for refund for fiscal years ended March 31, 1971 and March 31, 1972 accompanied by amended returns claiming a regular place of business at the London office of Parents. The allocation schedules on the amended returns show no rents, property, receipts or wages, either within or without New York.

(6) Claims for refund were denied and UGP timely filed petitions for refund for fiscal years ended March 31, 1971 and March 31, 1972.

(7) The New York office of Arthur Young and Company prepared financial statements, New York City, New York State and United States tax returns of UGP. Its mailing address was 277 Park Avenue, Suite 711, New York City. This suite was a law office maintained by Mr. Murray Drabkin vice-president and general counsel of UGP and another attorney. At the end of 1971, Mr. Drabkin moved to Washington, D.C. Although Mr. Drabkin did not have a New York Office after 1971, Suite 711 was retained as a mailing address of UGP.

(8) UGP neither owned nor rented real property and had no paid officers or employees, except that Mr. Drabkin received legal fees from UGP of \$25,000 during the fiscal year ended March 31, 1971. During fiscal years ended March 31, 1971 and March 31, 1972, UGP had receipts consisting of interest earned on certificates of deposit held by 51st Street Realty Corp. as a rent security deposit.

(9) Section 210.3(a)(4) of the tax law reads in part:

"provided, however, that if the taxpayer does not have a regular place of business outside the state other than a statutory office, the business allocation percentage shall be one hundred percent;"

(10) Pertinent Sections of Ruling of the State Tax

Commission dated March 14, 1962 read in part:

Sec. 4.11b: "A regular place of business is any bona fide office (other than a statutory office), factory, warehouse or other space which is regularly used by the taxpayer in carrying on its business . . . "

Sec. 4.12b: "The business allocation percentage is computed by adding together the percentages of the taxpayer's real and tangible personal property, business receipts and payrolls within New York during the period covered by the report, and dividing the total of such percentages by three. However, if one of the factors (property, receipts or payrolls) is missing, the other two percentages are added and the sum is divided by two, and if two of the factors are missing, the remaining percentage is the business allocation percentage."

Sec. 4.15b: "The following receipts are allocable to New York: . . .

7. All other business receipts earned in New York."

The State Tax Commission hereby

DECIDES:

(A) The taxpayer is not entitled to an allocation of business income or business capital. The office of the parent corporation in London, England did not qualify as a bona fide regular place of business of the taxpayer in a tax sense. UGP was not holding itself out to be doing business in England, had no British source income and did not file an income tax return with the United Kingdom. The taxpayer was incorporated in New York for the purpose of conducting real estate operations in New York and

its business capital and income had a situs in New York.

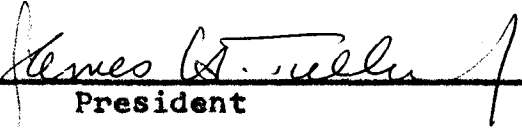
(B) In any event, the business allocation percentage of the taxpayer was 100%. The interest income constituted other business receipts and was earned in New York.

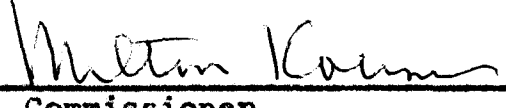
(C) Taxpayer's petition for refund for the FYE 3/31/71 and 3/31/72 is denied.

Dated: Albany, New York

this 27th Day of January 1976,

STATE TAX COMMISSION


President


Commissioner


Commissioner